

REMARKS/ARGUMENTS

Reconsideration of this application is requested. Claims 18-41 will be active in the application subsequent to entry of this Amendment.

The claims have been amended in order to address issues raised in the outstanding Official Action, issues pertaining to claim clarity, form of expression, antecedent basis and claim interpretation.

Addressing the issues in the order presented, in item 1, claims 20 and 31 are rejected as being indefinite, it being argued that these claims “recite water as the solvent of independent claims 18 and 29, respectively.” Claims 20 and 31 refer to “said solvent for cosmetic use” which has exact antecedent basis in claims 18 and 29, respectively. In both of these claims, a fatty emulsion is prepared and that fatty emulsion comprises, naturally, fats for cosmetic use and also “a solvent for cosmetic use”. While the fats are identified in the form of Markush expression the “solvent for cosmetic use” is not. One skilled in this art would not confuse “water” as a solvent for a “fat for cosmetic use” of the type defined in the listing included in part (a) of claims 18 and 29. Claims 20 and 31 are indeed consistent with the claims from which they depend and would be easily so interpreted by a person skilled in this art.

Item 2 of the Official Action objects to claims 20, 21, 29 and 31 as being indefinite by failing to employ the appropriate Markush terminology. Of the rejected claims, claim 20 is directed to a single component, thus there is no possibility for a Markush group. Counsel has addressed the examiner’s comments with respect to rejected claims 21, 29 and 32 as well as claims 18, 19 and 30 which also have been revised to employ the appropriate Markush terminology.

In item 3 of the Official Action independent claims 18 and 29 are criticized as being unclear because of the feature “if required” prior to the last step. Naturally, one having skill in this art would understand the meaning “if required” to signal an optional step, a step that would be employed if it was necessary to do so. In any event, in order to advance examination and resolve the issue, step (e) of independent claims 18 and 29 now forms the basis for separate dependent claims 40 and 41, respectively.

In item 4 of the Official Action claims 22 and 33 have been criticized as being unclear because of the terminology “and/or”. Both of these claims have been reworded to express the

choices as either a synthetic pigment, a natural pigment or both a synthetic and natural pigments. These amendments to the claims are believed to resolve the issues raised in items 1-4 of the Official Action.

An additional amendment has been made to independent claims 18 and 29. On page 8, third full paragraph of the Official Action the examiner declines to place critical emphasis on the term "non-pressed powder" as it appears in the preamble of the claim. This recitation has also been included in the last step of the claim therefore it clearly forms part of the claim no matter how one intends to interpret it, preamble or not, and it must be given consideration when applying prior art.

On page 8 of the Official Action, first and second paragraphs, the examiner discusses in detail the "phases" referred to in claims 18 and 29. The term "phase" is defined in the description of the invention in a manner clearly different from that explained by the examiner on page 8 of the Official Action. Specifically, *see* page 2, lines 19-21 and page 3, lines 10-12. Also, example 1 gives specific indications in order prepare these two separate parts which are, as will be evident, mixtures of various components.

In order to advance examination and have his claims properly understood and examined, the term "phase" has been removed from claims 18 and 29, thus these claims now refer to a fatty emulsion and a mixture of coloring powders. Consequential changes have been made in claims 22, 23, 32 and 34.

All of the previously pending claims, that is claims 18-39, were rejected as being anticipated by U.S. 4,994,264 to Verdon et al. The reasons underlying this continued rejection are set in part on pages 7 and 8 of the Official Action. As explained just above, applicants have amended their claims to clarify them and to respond to the examiner's comments as previous claim interpretation. Thus, the term "phase" should not cause confusion and the fact that the product is a "non-pressed powder" is very clearly stated in the claims. Both of these amendments deal directly with the prior art-based rejection and both of these amendments resolve the rejection of alleged anticipation.

Independent claims 18 and 29 are also rejected as allegedly being anticipated by U.S. 4,332,763 to Hempel et al, first cited and applied in the current Official Action. The amendments made to the claims and the above remarks pertain directly to this newly cited

reference. Hempel et al do not disclose a cosmetic product for make-up such as eye shadows, face powders and blusher but instead discloses "solid creams". In fact, these solid creams contain coloring powders in very small amounts (*see* examples). On the contrary, the amount of coloring powders included in the process of the invention is very high (*see* page 4, lines 23-24 and example 2).

Also, Hempel et al do not disclose the preparation of two distinct portions which are combined just before extrusion.

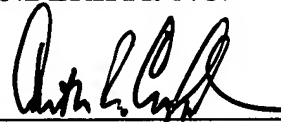
The Official Action also includes a provisional double patenting rejection. Counsel is advised that the referenced application Serial No. 10/558,633 will be or has become abandoned and therefore there are no conflicting claims. In any event, the referenced application does not claim the same process as that defined in the present application. The provisional rejection is no longer pertinent considering the status (abandoned or to be abandoned) of the referenced application.

Reconsideration and favorable action are solicited.

Respectfully submitted,

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